

REMARKS

The applicants have carefully considered the Office action dated June 8, 2006. By way of this Response, claims 1, 8, 9, 12 and 15 have been amended. In view of the following, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

As an initial matter, the applicants note that claims 23 and 51 stand allowed and are not further discussed herein.

Turning to the art rejections, all of the rejections are made under 35 U.S.C. § 103 based on Myers, US Patent 6,863,287. However, Myers only qualifies as prior art to this application under 35 U.S.C. § 102(e) and, at the time of the instant invention, both Myers and this application were owned by the same assignee or under an obligation to be assigned to the same assignee (i.e., Kolcraft Enterprises). Therefore, as a matter of law, Myers cannot be used in a rejection under 35 U.S.C. § 103 as can be easily seen upon reference to section c of 35 U.S.C. § 103. As a result, all of the art rejections are in error and must be withdrawn.

The only remaining issue in this case is the 35 U.S.C. § 112, second paragraph, rejections. Turning first to claim 1, applicants respectfully traverse the objection to the phrase “a wheeled walk-behind walker to at least partially support the seat.” There is nothing indefinite about this language. While it is true that a walk-behind walker does not include a seat, applicant’s invention as recited in claim 1 employs a walk-behind walker to support a seat. Further, as disclosed in the instant application, a walk-behind walker need not include a seat to support a seat. For instance, as can be seen in FIGS. 1, 2, 9 and 10, the

example walk-behind walker 16 does not include a seat, but is nevertheless employed to support a seat (carried, in this example, by the tray 14). Therefore, the objected-to phrase defines what applicants regard as the invention of claim 1 in a clear and distinct manner. Accordingly, the objection to claim 1 must be removed.

With respect to the second objection to claim 1, claims 1, 8, 9 and 12 have been amended to recite “walk-behind” as suggested by the Examiner.

Turning to claim 15, claim 15 has been amended to correct the antecedent basis of the term “tray.”

Lastly, applicants respectfully traverse the objection to claim 36. The phrase “the wheeled walker not including a seat” is clear and distinct. It covers any wheeled walker that does not have a seat. The Examiner’s statement that the “wheeled walker” always includes a seat ignores the phrase requiring the claimed wheeled walker to be a walker “not including a seat.”

Further, the phrase “a walker alternative comprising a seat, a base and the wheeled walker” is clear and distinct. The term “walker alternative” is understood by persons of ordinary skill in the art as shown by its usage in paragraph [0003] of the specification. Further, the “wheeled walker” recited in this phrase is the wheeled walker referred to earlier in the claim.

Finally, while the Examiner’s statement that the “walker alternative cannot comprise the wheeled walker” is testimony to the nonobvious nature of the invention recited in claim 36, the statement is factually incorrect. As disclosed in the instant application, a wheeled walker 16 is used as a support of a walker alternative, and, thus, does indeed form part of a walker alternative. As explained in applicants’ specification:

FIG. 1 is a perspective view of an example child entertaining apparatus 10 which may be used as a walker alternative, a walk behind walker, and/or a floor toy activity center. *The illustrated child entertaining apparatus 10 includes three primary components, namely, a base 12, a tray 14 and a support 16 which supports the tray 14 a distance above the base. When the components of the apparatus 10 are configured as shown in FIG. 1, the apparatus 10 may be used as a walker alternative. In the illustrated example, the support 16 is implemented by a wheeled walker 16. As shown in FIG. 2, the wheeled walker 16 can be removed from the base 12 and the tray 14. When so removed, the wheeled walker 16 may be used as a walk behind walker.*

(Paragraph [0026])(emphasis added). Therefore, in applicants' disclosure, a walker alternative can, in fact, include a wheeled walker.

In view of the foregoing, it is respectfully submitted that the 35 U.S.C. § 112, second paragraph, rejections must be withdrawn.

Since there are no valid art rejections against any of the pending claims, this application is in condition for allowance.

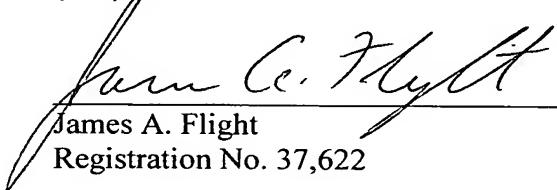
Before closing, the applicants note that all of the amendments made in this response are clarifying and, thus, not necessary for patentability. The amendments are clarifying in that none of the amendments were made to distinguish the prior art, and the amended claims are intended to state the exact same thing both before and prior to amendment (i.e., to have the same scope both before and after the amendments) in a more easily understood fashion. Consequently, these clarifying amendments do not give rise to prosecution history estoppel or limit the scope of equivalents of the claims under the doctrine of equivalents.

If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

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